

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

LUDMYLA SKORYCHENKO TOMPKINS,

Plaintiff,

v.

MEMORANDUM and ORDER
06-C-0078-S

THE WOMEN'S COMMUNITY, JOHN M.
SCHELLPFEFFER and ANDREW W. SCHMIDT,

Defendants.

Plaintiff Ludmyla Tompkins filed this civil action against defendants Women's Community, John M. Schellpfeffer and Andrew W. Schmidt alleging that they violated her constitutional rights. On March 31, 2006 the Court granted the motion of defendants Schellpfeffer and Schmidt to dismiss plaintiff's complaint.

On March 27, 2006 defendant Women's Community filed a motion to dismiss plaintiff's complaint. This motion has been fully briefed and is ready for decision.

A complaint should be dismissed for failure to state a claim only if it appears beyond a reasonable doubt that the plaintiff can prove no set of facts in support of the claim which would entitle the plaintiff to relief. Coney v. Gibson, 355 U.S. 41, 45-46 (1957). In order to survive a challenge under Rule 12(b)(6) a complaint "must contain either direct or inferential allegations

respecting all the material elements necessary to sustain recovery under some viable legal theory." Car Carriers, Inc. v. Ford Motor Co., 745 F. 2d 1101, 1106 (7th Cir. 1984).

FACTS

For the purposes of deciding this motion to dismiss the facts alleged in plaintiff's complaint are true.

Plaintiff, who is from the Ukraine, is an adult resident of Wausau, Wisconsin. Her husband physically abused her on May 7, 2005. Plaintiff went to a shelter operated by defendant Women's Community. Staff members of the Women's Community forced her to leave the shelter.

MEMORANDUM

Defendant Women's Community moves to dismiss plaintiff's complaint against it for failure to state a claim for relief under 42 U.S.C. §1983.

To state a claim under 42 U.S.C. § 1983 plaintiff must demonstrate that the defendants deprived her of a constitutional right while acting under state law. Adickes v. S.H. Kress and Co., 398 U.S. 144, 150 (1970). Plaintiff has not alleged facts that support her claim that the defendant was acting under color of state law or violated her Constitutional rights. Plaintiff's allegations are insufficient to state a claim under 42 U.S.C. § 1983.

In their brief defendants concede that plaintiff appears to have a state law claim for intentional infliction of emotional distress. This Court declines to exercise continuing supplemental jurisdiction over this claim pursuant to 28 U.S.C. § 1367(c) (3) and United Mine Workers of America v. Gibbs, 383 U.S. 715, 726 (1986). See Brazinski v. Amoco Petroleum Additives, Co., 6 F. 3d 1176, 1182 (7th Cir. 1993). Although defendant requests the Court dismiss this claim, it will instead remand the state law claim to Marathon County Circuit Court from which it was removed.

Plaintiff is advised that in any future proceedings in this matter she must offer argument not cumulative of that already provided to undermine this Court's conclusion that her claims must be dismissed. See Newlin v. Helman, 123 F.3d 429, 433 (7th Cir. 1997).

ORDER

IT IS ORDERED that the motion of defendant Women's Community to dismiss plaintiff's complaint is GRANTED.

IT IS FURTHER ORDERED that judgment be entered in favor of defendants Women's Community, John M. Schellpfeffer and Andrew W. Schmidt against plaintiff DISMISSING her complaint and all federal law claims contained therein with prejudice and costs.

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IT IS FURTHER ORDERED that plaintiff's state law claim for intentional infliction of emotional distress against defendant Women's Community is REMANDED to Marathon County Circuit Court.

Entered this 17th day of April, 2006.

BY THE COURT:

S/

JOHN C. SHABAZ
District Judge